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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,696

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Maurizio Pilu

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

CHEN, CHIA WEI A

ART UNIT

PAPER NUMBER

2622

NOTIFICATION DATE

DELIVERY MODE

07/23/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/822,696	Applicant(s) PILU, MAURIZIO	
	Examiner CHIA-WEI A. CHEN	Art Unit 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31, 34-38 and 40-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-29, 35-38 and 40-59 is/are allowed.
- 6) ☒ Claim(s) 30, 31 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 30-31 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 34 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 36 of U.S. Patent No. 7,106,204. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 34 of the instant application is broader than and is therefore anticipated by claim 36 of U.S. Patent No. 7,106,204.

It is noted that: Claim 34, discloses an image capture device (claim 36 of US 7,106,204: image capture system capable of capturing images) comprising:

- an image detector device (image capture system capable of capturing images) for capturing an image;

- a transponder device (analyzer) for receiving activation signals from a remote source (analyzer responds to a second set of body sensors);

- an attention detection component (analyzer) for detecting an attention signal of a host wearer (first animate object) from a self perspective (responds to a first set of body sensors for detecting behavioral aspects of said first object) and the activation signals from the remote source (second set of body sensors);

- said attention detection component being configured for analyzing said activation signals (identifying a situation of shared attention from first and second set body sensors), and

- activating the image capture device to capture the image in response to said self perspective attention signal and said received activation signals (generating an image capture signal in response to the determination of shared attention between said first and second objects, based on behavioral aspects sensed by the first and second set of body sensors).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn (US 2002/0159681).

Claim 30, Kahn teaches a method of automatically capturing an image of a first animate object by a host, said method comprising:

detecting at least one attention signal of the first animate object toward the host in response to a detectable body parameter of at least one the first animate object (detecting an appearance of a smile; paragraph 0087);

analyzing said at least one attention signal to determine an interest level of said at least one first animate object, said analysis being performed at the host wearer in a mode of an observer perspective of said at least one first animate object; and capturing said image in response to said interest level (a camera image signal when a smile is detected by event detector 12; paragraph 0087-0089).

Although Kahn does not teach wherein the camera is worn by a host, it would have been obvious to a person having ordinary skill in the art to have made the camera and image analysis circuit portable and wearable. The miniaturization of circuitry and

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the portability of a camera are well-known in the art, and can be used to serve the purpose of automatically capturing an ideal image the moment a subject smiles.

Claim 31, Kahn teaches the method as claimed in claim 30 further comprising:
determining a situational saliency of a scene by analyzing said at least one attention signal (event detection circuit 12 is configured to detect the appearance of a smile, the sound of laughter, or the occurrence of a predetermined event triggered at the exhibit. The event detector is therefore configured to analyze the presence of a smile, i.e., attention is directed to an object, and can indicate that an image should be captured at that moment; See paragraph s 0087-0090).

Allowable Subject Matter

6. Claims 1-29, 35-38, and 40-59 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not teach or fairly suggest: a portable detector for receiving the host perspective and the observer perspective signals for **determining a situation of raised attention of said host wearer from said received host perspective signal and said received observer perspective signal**; and used in combination with all the other limitations of claim 1.

Similar subject matter is presented in independent claims 23, 34, 35, 38, 42, 43, 44, and 52, although claim 34 is currently rejected on the ground of nonstatutory obviousness-type double patenting (see above).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kahn (US 2002/0140822) discloses a camera with visible and infra-red imaging.

Gutta (US 2002/0101505) discloses a method and apparatus for predicting events in video conferencing and other applications.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHIA-WEI A. CHEN whose telephone number is (571)270-1707. The examiner can normally be reached on Monday - Friday, 7:30 - 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lin Ye/
Supervisory Patent Examiner, Art Unit 2622

/C. A. C./
Examiner, Art Unit 2622